

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16592
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On July 27, 2001, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1995 in the total amount of \$4,582.

On September 26, 2001, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information showing the taxpayer sold real property in Idaho in 1995. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for the taxable year 1995. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayer letters asking the taxpayer about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer did not respond to the Bureau's letters. The Bureau determined the taxpayer was required to file an Idaho income tax return, so it prepared a return for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination stating that the Notice of Deficiency Determination is mathematically incorrect because any gain or loss on the disposition of an asset

should account for a cost basis. The taxpayer also stated that tax was paid to the state of California on the transaction and asked that Idaho take that into consideration, otherwise, he would be unduly burdened by being taxed twice.

Prior to the Bureau receiving the taxpayer's protest letter, the taxpayer's case continued through processing and went into collections. When the Bureau received the taxpayer's protest letter, the taxpayer's case was pulled from collections, and the Bureau proceeded with allowing the taxpayer the additional time he requested to gather the necessary information. During this time, the Bureau found that the taxpayer was involved in other sales of Idaho property in 1998 and 1999. Therefore, the Bureau sent the taxpayer letters regarding those property sales. The taxpayer did not respond to the Bureau's letters, so the Bureau prepared income tax returns for the taxpayer for 1998 and 1999 and sent him a Notice of Deficiency Determination dated March 19, 2002. In this Notice of Deficiency Determination, the Bureau included the previous Notice of Deficiency Determination dated July 27, 2001, for tax year 1995.

The taxpayer did not respond to the March 19, 2002, Notice of Deficiency Determination, and the Bureau did not receive any follow-up information on the previous Notice of Deficiency Determination. The taxpayer protested only the 1995 Notice of Deficiency Determination. However, since the Bureau included tax year 1995 in the Notice of Deficiency Determination dated March 19, 2002, and the issue for all the years is the same, the Tax Commission decided the matter for all the years identified in the March 19, 2002, Notice of Deficiency Determination.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond. The Tax Commission sent a follow-up letter to the taxpayer, but he still failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The facts show and the taxpayer did not dispute that there was a sale of property in Idaho. Therefore, if the taxpayer realized a gain on the sale, the gain is considered Idaho source income (Idaho Code section 63-3026A(3)(ii)). If the gain is in excess of the filing requirement provided for in Idaho Code section 63-3030, the taxpayer is required to file an Idaho income tax return.

The information available shows the taxpayer sold Idaho property for \$42,458, \$11,470, and \$12,580 in the years 1995, 1998, and 1999, respectively. Presumably, the taxpayer had basis in the property but that basis was not disclosed. The taxpayer stated he paid tax to the state of California on the sale of the property. However, he provided no information or documentation to show the amount of the gain or the tax that was paid. The only information the Tax Commission has regarding the sales is the gross proceeds from the sales. The Bureau used those amounts as the taxpayer's adjusted gross income for Idaho. Since the taxpayer provided nothing to show the amounts were incorrect, the Tax Commission agreed with the use of the amounts as the taxpayer's adjusted gross income.

The taxpayer has not met his burden of proof of showing that the returns prepared by the Bureau are incorrect. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). Therefore, the Tax Commission upholds the Bureau's determination for the tax years 1995, 1998, and 1999.

The Bureau added interest and penalty to the taxpayer's returns per Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed those additions and found them proper and in accordance with the Idaho Code.

WHEREFORE, the Notice of Deficiency Determination dated March 19, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$2,714	\$679	\$1,415	\$4,808
1998	204	51	56	311
1999	275	69	55	<u>399</u>
			TOTAL DUE	<u>\$5,518</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

[Redacted]
